

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG

LAWRENCE FRY, JR.,

Petitioner,

v.

Civil Action No. 1:18-cv-165  
(Judge Kleeh)

FREDERICK ENTZEL,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 9] AND  
DISMISSING THE PETITION AS MOOT [DKT. NO. 1]

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On August 23, 2018, the pro se Petitioner, Lawrence Fry, Jr. ("Petitioner"), an inmate at FCI Hazelton in Bruceton Mills, West Virginia, filed a petition in this action pursuant to 28 U.S.C. § 2241 [Dkt. No. 1] arguing that his prior convictions do not qualify as controlled substance predicate offenses for a career offender enhancement to have applied to his sentencing.

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. On May 19, 2021, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the petition be denied and dismissed with prejudice due to a lack of subject matter jurisdiction [Dkt. No. 9 at 10].

The R&R also informed the parties that they "shall have fourteen (14) days from the date of service of this Report and

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Recommendation" within which to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection" [Dkt. No. 9 at 10]. It further warned that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals" [Id. at 11]. The docket reflects that service of the R&R was accepted May 24, 2021 [Dkt. No. 10]. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciro v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. This Court agrees that the petition should be denied and dismissed based on a lack of subject

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matter jurisdiction. Petitioner cannot satisfy the § 2555(e) savings clause which is necessary for the Court to have subject matter jurisdiction to evaluate the merits of Petitioner's claims brought in a § 2241 petition. Accordingly, upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [Dkt. No. 9]. The § 2241 Petition [Dkt. No. 1] is **DENIED** and **DISMISSED WITH PREJUDICE**. The Court further **ORDERS** that this matter be **STRICKEN** from the Court's active docket and **DIRECTS** the Clerk to enter judgment in favor of Respondent.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to the pro se Petitioner via certified mail, return receipt requested.

**DATED:** July 2, 2021

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/s/ Thomas S. Kleeh  
THOMAS S. KLEEH  
UNITED STATES DISTRICT JUDGE